fore to have adhered strictly to the orthodox English view that a beneficiary under a contract to which he is not a party has no enforcible interest either legal or equitable. *Knights of the Modern Maccabees* v. *Sharp* (1910), 163 Mich. 449; *Edwards* v. *Thoman* (1915), 187 Mich. 361; *In Re Bush's Estate* (1917), 199 Mich. 192. The statute relied upon by the majority opinion as the basis for changing the rule, while first enacted by the legislature as a part of the "Judicature Act of 1915," does not seem to announce a new principle either of substantive or adjective law. It is simply a statement of the generally prevailing equity rule in regard to joinder of parties, and was apparently borrowed from the Federal Equity Rules (No. 37) and from the state Codes of Civil Procedure, of which it is an integral part. POMEROY'S CODE REMEDIES (4th ed.) § 111. "It is," in the language of the dissenting opinion in the principal case, "a novel idea that a statute, plainly intended to affect procedure only, may be used to change a settled rule of the law of contracts, to confer upon a person a legal right and interest in subject matter where there was none before the statute was enacted". Especially is this so where the statute is merely declaratory. It is to be hoped that a more satisfactory basis can be found for a result which is undeniably desirable. For a collection of the cases and full discussion of the problem involved see 15 HARVARD L. REV. 767; 27 YALE L. JOUR. 1008.

DAMAGES: MOUSE IN COCA-COLA.—A bottling company sold a bottle containing a mouse as well as the well-known beverage to a retailer, who sold it (or them) to the innocent and unsuspecting female plaintiff. The lady became acutely sick after drinking the concoction and brought suit against the bottling company. *Held,* award of $500.00 damages was not excessive, there being no evidence "that passion or prejudice operated upon the members of the jury." *Bellingrath* v. *Anderson* (Ala., 1919), 82 So. 22.

For an exhaustive as well as an interesting discussion of the principles involved in numerous cases of this character, see 17 MICH. LAW REV. 261.

DEEDS—CONDITIONS—REPUGNANCY TO INTEREST CREATED—SALE TO NEGROES. —Plaintiff company, owner of many lots in certain locality, sold one lot to K, under whom defendant, a negro, claims title. The deed to K, duly recorded, provided that if grantee, her heirs or assigns, should lease or sell to any negro, Chinese, or Japanese, title should revert to grantor. This was put in the form of a covenant and expressly stated to run with the land,—to be terminable, if desired by owner, in 1925. *Held*: Such condition in deed of fee simple is within rule of common law, as re-declared in Civil Code of California, § 711, that "conditions restraining alienation, when repugnant to the interest created, are void." *Title Guarantee and Trust Co.* v. *Garrott,* Dist. Ct. App., 2nd Dist. Cal., 183 Pac. 470.

The deed in full does not appear in the report of this case, nor was it set forth in the complaint, the court assuming from briefs of counsel that a title in fee simple absolute was conveyed thereby, and proceeding on that basis. The plaintiff's contention was this clause in the deed created a condition subsequent and that, by its violation, the fee was forfeited and the plaintiff is en-

titled to re-entry. The court agrees that this is to be considered as a condition subsequent, but declares it void. The theory, in part, is as follows: that the granting of a fee simple is a conveyance of the whole estate, and carries with it an absolutely unfettered right of alienation; and the court thinks, on principle, that there should be no such restriction allowed either as to persons or time,—(following a dictum in *Murray* v. *Green,* 64 Cal. 367, in which case the restriction was not limited either as to persons or time), and that the same reasoning which declares void a restraint total as to persons, though limited as to time, (*Latimer* v. *Waddell,* 119 N. C. 370), should apply here with equal force; that any restraint on alienation is repugnant to the grant of a fee simple. The consideration of public policy, as involved in the uncertainty of titles which the court seemed to fear would follow if such restraints were allowed, seemed to have some weight in influencing the decision. Contra: In the following case it was held that a restriction in deed against selling to any negro is not an unlawful restraint on powers of alienation and not against public policy. *Koehler* v. *Rowland,* 275 Mo. 573; also substantially the same in *Queensborough Land Co.* v. *Cazeaux,* 136 La. 724, L. R. A. 1916 B, 1201. Professor GRAY, in his RESTRAINTS ON THE ALIENATION OF PROPERTY, discusses this subject after an exhaustive review of the cases—pp. 25-42. He states in part, § 41, as follows: "The authorities, it will be seen, are in hopeless conflict. The rule which naturally suggests itself is that a condition is good if it allows of alienation to all the world with the exception of selected individuals or classes; but is bad if it allows of alienation only to selected individuals or classes. (Williams on Settlements, 134, 135.) Perhaps this rule might be difficult of application, or easily evaded. At any rate the leading case of *Doe* v. *Pearson,* 6 East. 172, and the late case of *In re Macleay,* L. R. 20 Eq. 186, cannot be brought within it, for they both allow the power of alienation to be restrained within the narrowest limits; and Sir George Jessel says: 'The test is whether the condition takes away the whole power of alienation substantially.' L. R. 20 Eq. 189."

DIVORCE—ALIMONY—FUTURE EARNINGS AS PROPERTY UNDER STATUTE.—In a proceeding for divorce under the Ohio statute (General Code Sec. 11,990) providing that "the court shall * * * allow such alimony out of her husband's property as it deems reasonable, etc." it was contended that permanent alimony could not be allowed which was based upon the future personal earnings or wages of the husband. *Held,* that the words "out of her husband's property" were directory only and not mandatory and that permanent alimony could be based on future earning power under this particular statute. *Lape* v. *Lape* (Ohio, 1919), 124 N. E. 51.

The generally accepted doctrine in this country has been that future earnings could be considered as a basis for permanent alimony. *Campbell* v. *Campbell,* 37 Wis. 206; *Muir* v. *Muir,* 133 Ky. 125; *Griffin* v. *Griffin,* 173 Ky. 636; *Snyder* v. *Snyder,* 162 N. Y. Supp. 607. And this even though the statute provided for such alimony out of the husband's estate at the time of the divorce. In the Wisconsin case above cited, the court remarked: "We cannot regard it [the statute] as a hard provision, but as a remedial and bene-